* **THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

–

+ W.P.No.1453 OF 1995

% Dated 07-07-2006

Management of Divisional Engineer, Telecommunications, Mahaboobnagar, A.P.

…. Petitioner

Vs.

$ Sri Venkataiah and another.

…. Respondents

! Counsel for the Petitioner: Mr. R.S. Murthy

^ Counsel for the Respondent No.1: Mr. C. Suryanarayana

<GIST:

> HEAD NOTE:

? Cases referred

[1] 1985 (2) LLJ 539
2 2002(2) ALD 462
3 2002(5) ALD 14(SC)
4 2003(2)LLJ 359
5 (2004)8 SCC 262
6 (2002(1) LLJ 258
7 (1994(1) LLN 606
8 2006(1) Decisions Today SC 493
9 1958 (1) LLJ 533
10 1963(1) LLJ 318
11 AIR 1969 SC 182
12 1961(2) LLJ 89
13 1993 LLR 112
14 (2006)3 SCC 81
15 2005(8) SCC 750
16 (2005) 3 SCC 409
17 AIR 2005 SC 1252
18 1979 LAB.I.C. 827 (SC)
19 1962(2) LLJ 227 (SC)
20 AIR 1959 SC 1191
21 1967(1) LLJ 423 (SC)
22 AIR 2005 SC 660 =(2005) 2 SCC 183
23 (2005) 2 SCC 470
24 (2005) 5 SCC 100

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.1453 of 1995

ORDER:

Aggrieved by the award of the Industrial Tribunal, (Central), Hyderabad in I.D.No.68 of 1990 dated 18.11.1993, whereby the 1st respondent was directed to be reinstated in service

with full back wages and protection of seniority among employees of Mahaboobnagar District, the present writ petition is filed.

Facts, to the extent necessary, are that the 1st respondent was employed on daily wages as a casual mazdoor from 10.1.1984 to 30.11.1984. After a break of seven months, his services was again engaged on 1.7.1985 and he worked continuously till 31.3.1986. During this period, between 1.7.1985 and 31.3.1986, he actually worked for 183 days and was not given weekly offs. Aggrieved by the action of the petitioner herein, in retrenching the 1st respondent from service, a dispute was raised and consequent thereto the Central Government referred the dispute to the Industrial Tribunal for adjudication. The order of reference reads as under:

"Whether the action of the management of Divisional Engineer, Telecom, Mahaboobnagar in retrenching the workman Sri Venkataiah, Ex-casual Mazdoor w.e.f. 1.4.1986 is justified? If not to what relief the workman is entitled?"

This reference was registered as I.D.No.68 of 1990. A claim statement was filed by the 1st respondent – workman. The petitioner herein filed their counter affidavit wherein they stated that the 1st respondent was engaged as a casual labour for a specific work and for a specified purpose w.e.f. 30.1.1984, that the 1st respondent was clearly informed that he would be provided with work as and when it was available and that his services were liable to be disengaged when there was no work, that he worked as a casual mazdoor for 231 days during the year 1984, 109 days during the year 1985 and 74 days during the year 1986 to render class IV duties purely on casual basis as there was heavy absenteeism and shortage of Group 'D' staff in the office, that the engagement of the 1st respondent was never continuous and was only casual depending on the availability of work and that the engagement was with the specific understanding that, as and when Group 'D' staff were available, his services would not be engaged. The 1st respondent was paid Rs.6/- per day for the work done by him and since there was no work with effect from 1.4.1986 his services were disengaged for want for work. The petitioner herein contended before the Tribunal that the 1st respondent had made his claim for reinstatement nearly 4 years after his disengagement, that the question of termination of a casual labourer did not arise as the work itself was casual in nature, that there were no merits in his claim and that he was not entitled for employment nor for the back wages claimed by him.

Before the Industrial Tribunal, the 1st respondent examined himself as W.W.1 and marked Ex.W.1 to 17 as exhibits. On behalf of the petitioner herein Sri P.Janardhan Rao was examined as M.W.1. However no documents were marked as exhibits. M.W.1 deposed that the services of the 1st respondent were engaged as casual labour as there was heavy absenteeism, that before his engagement the 1st respondent was intimated that he was engaged only on temporary basis and in leave vacancies, that the 1st respondent was engaged from 30.1.1984 to November 1984 for 231 days, from July, 1985 to March 1986 for 183 days and because there was no vacancy of Group 'D' employees, after March, 1986, the

1st respondent was not engaged in service thereafter.

The Tribunal held that retrenchment of the 1st respondent from service, with effect from 1.12.1984, was without notice, without payment of notice period wages and without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act and was in violation of the orders of the Central Government dated 1.10.1984, according to which casual mazdoors who had served the department for at least 240 days in a year and whose services were proposed to be terminated, were required to be given one month notice before termination of their service or one month wages in lieu thereof. The Tribunal further held that, though the number of days for which the 1st respondent was actually employed, during the period 30.1.1984 to 30.11.1984, was 231 days, the 37 Sundays, 10 Second Saturdays, 14 national and telegraph holidays for which the 1st respondent was entitled for wages was also to be added as part of his services within a year, in view of the judgment of the Apex Court in **Workman of American Express International Banking Corporation v Its Management**[1] and if so included the total number of days of employment of the 1st respondent, during the period between 30.1.1984 and 30.11.1984, was 292 days. The Tribunal held that for the period 1.7.1985 to 31.3.1986, though the 1st respondent was actually employed for 183 days, he was denied the benefit of paid holidays on 43 Sundays and other paid holidays during this period and thus the number of days worked out to 226 days. The Tribunal, however held that since the 1st respondent was illegally retrenched during the period from 1.12.1984 to 30.6.1985, this period was required to be counted as service for all purposes and therefore the 1st respondent should be deemed to be in continuous service preceding his retrenchment on 1.4.1986 and must be deemed to be in continuous employment from 30.1.1984 to 31.3.1986 as per Section 25-B of the Industrial Disputes Act. Relying on certain decisions of the Supreme Court, the Tribunal held that even if there was no post of Group 'D' to absorb him, the petitioner was entitled to conferment of temporary status as laid down in the Telecom Order dated 7.11.1989. The Tribunal held that the 1st respondent herein was entitled to reinstatement as Group 'D' employee with full back wages, protection of his seniority and for all other benefits which were incidental and consequential to such reinstatement.

Sri R.S.Murthy, learned Standing counsel for the petitioner herein, would place before this Court the order of appointment, issued by the Department of Telecommunications, Office of the General Manager, Telecom, Mahabubnagar, dated 7.7.2000 whereunder the 1st respondent herein was appointed as a temporary status mazdoor consequent on his completing 240 days of service as casual mazdoor with effect from 9.6.2000 in the pay scale of Rs.2550-55-2660-60-3200. Among the terms of appointment was that after rendering three years of continuous service, on attaining temporary status, the 1st respondent would be treated on par with a temporary Group-D employee for the purpose of the contribution to GPF etc. Learned Standing Counsel would submit that, since the proceedings dated 7.7.2000 is independent of the Award of the Industrial Tribunal, irrespective of the result in the writ petition

the 1st respondent would be continued in service pursuant to the proceedings dated 7.7.2000.

Learned Standing Counsel would submit that the Award passed by the Tribunal is beyond the scope of the reference and since engagement of the 1st respondent, during the period from 1.7.1985 to 31.3.1986, was the subject matter of reference and not the earlier period from 30.1.1984 to 30.11.1984, the Tribunal had exceeded its jurisdiction in examining the validity of retrenchment of the services of the 1st respondent on 01.12.1984. Learned Standing Counsel would submit that since the 1st respondent herein had, admittedly, not put in 240 days of service during the 12 month period prior to 1.4.1986, he did not render continuous service as prescribed under Section 25-B of the Industrial Disputes Act and was consequently not entitled to the protection of Section 25-F of the Industrial Disputes Act. Learned Standing Counsel would submit that, even otherwise, since the 1st respondent was engaged on casual basis for temporary durations and he was informed accordingly, his case fell under the exceptions in clause (bb) of section 2(oo) and as such disengagement of the services of the 1st respondent from 1.4.1986 did not amount to retrenchment. Learned standing counsel would place reliance on **Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad v. Presiding Officer, Industrial Tribunal-I, Hyderabad**[2], **Haryana State F.C.C.W Store Limited v. Ram Niwas**[3], **S.M.Nilajkar v. Telecom District**[4], **Executive Engineer, ZP Engg. Divn. V. Digambara Rao**[5]; **Tarun Kundu v. State of West Bengal**[6], **Zakir Hussain v. Engineer in Chief, Irrigation Department**[7], **Secretary, State of Karnataka v. Umadevi**[8].

Sri C.Suryanarayana, learned counsel for the 1st respondent, on the other hand, would seek to sustain the Award of the Industrial Tribunal and submit that the Tribunal was empowered to examine the question relating to the retrenchment of the services of the 1st respondent from 1.12.1984 also. Learned counsel would submit that the Industrial Tribunal was entitled to decide the date from which the award must be given effect to and would rely on **British India Electric Construction Company Ltd v. Their Workmen**[9] in this regard. Learned counsel would submit that the question relating to the retrospective nature of the Award was a matter exclusively in the discretion of the Tribunal and that it was open to the Tribunal to exercise its discretion and pass an Award from a date even prior to the date of the reference. Learned counsel would place reliance on **Rajkamal Kalamandir (Private) Ltd v. Indian Motion Pictures Employees' Union**[10] and **Hydro (Engineers) Private Limited v. Workmen**[11] in this regard. Learned counsel would submit that the law of limitation is not applicable to Industrial Tribunals and would rely on **Inder Singh & Sons v. Workmen**[12]. Learned counsel would also rely on **Ganganath K.S.Vidyalaya v. Mandal**[13].

Before examining the rival contentions it is necessary to take note of the relevant provisions of the Industrial Disputes Act.

Retrenchment, as defined in Section 2(oo) of the Industrial Disputes Act, reads as under:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) voluntary retirement of the workman ; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill- health"

Chapter III relates to Reference of disputes to Board, Courts or Tribunals and Section 10 thereunder reads thus:

"**10 Reference of disputes to Boards, Courts or Tribunals**

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

(1-A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government :

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months :

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately^ to the Labour Court, Tribu- nal or National Tribunal for extension of such period or for any other reason, and the presiding officer to such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal

under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.
(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.
(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.
(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,-
(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, insofar as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and
(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.
Explanation: In this sub-section “Labour Court” or “Triobunal” includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.
(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36-A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in 'this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.”

Chapter V-A relates to lay off and retrenchment and Section 25-B thereunder is the definition of continuous service. Section 25-B reads thus:

“**25-B.** ***Definition of continuous service***:—For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(*a*) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(*i*) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(*ii*) two hundred and forty days, in any other case;

(*b*) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(*i*) ninety-five days, in the case of a workman employed below ground in a mine; and

(*ii*) one hundred and twenty days, in any other case.

Explanation.—(Omitted as not relevant for the present case.)"

Section 25-F prescribes the conditions precedent to retrenchment of a workman and reads as under:

25F Conditions precedent to retrenchment of workmen:-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette"

NON RENEWAL OF CONTRACT OF EMPLOYMENT/TERMINATION OF SUCH CONTRACT IN TERMS OF THE STIPULATION CONTAINED THEREIN: DOES NOT AMOUNT TO RETRENCHMENT:

Sri R.S. Murthy, learned Standing Counsel for the petitioner herein, would contend that since the 1st respondent was engaged on a casual basis for a temporary duration and he was informed accordingly, his case fell under the exception in clause (bb) of Section 2(oo) and as such his disengagement from service from 01.04.1986 did not amount to retrenchment.

In **Municipal Council, Samrala Vs. Raj Kumar**[14], the Supreme Court held thus:-

".....**Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry, whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf**....."

".....The decision of this Court is not an authority for the proposition that apart from a project or a scheme of temporary duration, Section 2(oo) (bb) of the Industrial Disputes Act will have no application. Furthermore, in the instant case, as has been noticed by this Court in **S.M. Nilajkar: (2003)4 SCC 27** itself, the respondent was categorically; informed that as per the terms of the contract, the same was a short-lived one and would be liable to termination as and when the appellant thought it fit or proper or necessary to do so. Yet again, this Court in view of the facts and circumstances prevailing therein had no occasion to consider the second part of Section 2(oo)(bb) of the said Act....." (emphasis supplied).

Thus both cases, (1) where a contract of employment for a specific period is not renewed on its expiry and (2) where a contract of employment is terminated in terms of the stipulation contained in the contract; would fall under the exception in clause (bb) of Section 2(oo) of the Industrial Disputes Act, and termination of such employment would not amount to retrenchment.

In **S.M. Nilajkar**[4], the Supreme Court held thus:-

".....The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract;

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a schedule or project which was to last only for a particular length of time or upto to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove that above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb) as stated herein above. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment……"

In **S.M. Nilajkar[4]**, the Supreme Court held that engagement of a workman as a daily-wager did not, by itself, amount to putting him on notice that his engagement was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. It is only where a contract of employment is consciously entered into by the workman with the employer would it result in a notice to the workman, on the date of the commencement of the employment itself, that his employment was liable for termination in terms of the stipulations made therein.

In the present case, Sri P. Janardhan Rao (M.W-1), deposed that the services of the 1st respondent was engaged as a casual labourer as there was heavy absenteeism and that, before his engagement, the 1st respondent was intimated that he was engaged only on a temporary basis in a leave vacancy. The oral evidence of M.W-1 apart, there is no documentary evidence on record to show that there was a written contract of employment and that such a contract contained a stipulation that the services of the employee was short-lived and was liable for termination in terms thereof.

In **S.M. Nilajkar[4]**, the Supreme Court held that, in order to exclude termination of the services of an employee from the definition of retrenchment, it was for the employer to prove the ingredients so as to attract sub-clause (bb) of Section 2(oo) of the Industrial Disputes Act. In this case, except for the oral testimony of Sri P. Janardhan Rao, there is no documentary evidence on record to show that there was a contract of employment, that it contained a stipulation relating to termination of service of the workman and that the services of the 1st respondent was disengaged in terms thereof. The Tribunal has, therefore, rightly not recorded a finding in favour of the petitioner herein on this aspect. The contention of Sri R.S. Murthy, learned Standing Counsel for the petitioner herein, that the termination of services of the 1st respondent, with effect from 01.04.1986, would not amount to retrenchment in view of

clause (bb) of Section 2(oo) of the Industrial Disputes Act must therefore be rejected.

PROTECTION OF SECTION 25-F: MINIMUM PERIOD OF 240 DAYS SERVICE DURING THE TWELVE MONTH PERIOD PRIOR TO RETRENCHMENT NECESSARY:

It is only if a workman is employed in an industry and has been in continuous service for not less than one year under an employer, would he be entitled to the protection of Section 25-F of the Industrial Disputes Act when his services are sought to be retrenched by his employer. In order to determine "continuous service of not less than one year" it is necessary to examine the definition of continuous service under Section 25-B of the Industrial Disputes Act. In the case on hand, since the petitioner's services were engaged from 1.7.1985 till 31.3.1986, he was not in continuous service for a period of not less than one year under the petitioner herein. It is therefore necessary to examine whether he could be deemed to have been in continuous service under the petitioner under Section 25-B(2)(a)(ii) of the Industrial Disputes Act whereunder if a workman, during the period of 12 calendar months preceding the date with reference to which calculation has to be made, has actually worked under the employee for not less than 240 days he shall be deemed to be in continuous service of one year with that employer. The date, with reference to which calculation is to be made under Section 25-B(2)(a)(ii) of the Industrial Disputes Act, is the date of termination.

In **Surendranagar District Panchayat Vs. Dahyabhai Amarsingh**[15], the Supreme Court held thus:

"..... To attract the provisions of Section 25-F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year. Section 25-B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment". The purport of this section is that if a workman has put in uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, authorised leave, an accident, a strike which is not illegal, a lockout or cessation of work, that is not due to any fault on the part of the workman, shall be said to be continuous service for that period. Thus the workman shall be said to be in continuous service for one year i.e. 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25-B. However, the workman must have been in service during the period i.e. not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section (1). The workman must be in the employment of the employer concerned not only on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of Section 25-B is that the workman should be in the employment of the employer for the continuous, uninterrupted period of one year except the period the absence is permissible as mentioned hereinabove. Sub-section (2) of Section 25-B introduces the fiction to the effect that even if the workman is not in continuous service within the meaning of clause (*i*) of Section 25-B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (*a*) and (*b*) of sub-section (2). By the legal fiction of sub-section (2)(*a*)(*i*), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. **Provisions of the section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25-F....."**

"……..In the matter of *Mohan Lal* v. *Bharat Electronics Ltd.: (1981) 3 SCC 2225* this Court has said that sub-section (2) of Section 25-B comprehends a situation that where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of 12 months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. It is not necessary for the purpose of sub-section (2)(*a*) that the workman should be in service for a period of one year and that his service is continuous service within the meaning of sub-section (1). If his case is governed by sub-section (1) then it need not be covered by sub-section (2). Sub-section (2) envisages a situation not

governed by sub-section (1) and sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for one year but has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date, being the date of retrenchment…."

"…**These decisions in unambiguous words laid down that sub-sections (1) and (2) of Section 25-B comprehend different situations for the calculation of continuous service for not less than one year and continuous service which is less than one year but for 240 days in 12 months preceding the date of termination under an employer….."**

"…….**In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he had actually worked with the employer for not less than 240 days during the period of twelve calendar months preceding the date of termination**……"
"…..**Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.** The courts below have wrongly drawn an adverse inference for non-production of the record of the workman for ten years. **The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Industrial Disputes Act**……." (emphasis supplied)

In **Karnataka SRTC v. S.G. Kotturappa**[16], the Supreme Court held thus:-

"….It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor were the mandatory requirements of Section 25-F of the Industrial Disputes Act required to be complied with before terminating his services, unless they complete 240 days' service within a period of twelve months preceding the date of termination….." (emphasis supplied)

Since the 1st respondent's services were terminated with effect from 01.04.1986, the period of 12 months is to be reckoned from 1.4.1985 till 31.3.1986 and during this period, the Tribunal has recorded its finding that his services, including paid holidays, were engaged for a period of 226 days. Since the 1st respondent did not put in the minimum of 240 days of service during the 12 months period preceding his termination, he is not entitled for protection under Section 25-F of the Industrial Disputes Act.

INDUSTRIAL TRIBUNALS/LABOUR COURTS CANNOT EXECEED THE SCOPE OF REFERENCE:

The Tribunal, however, held that during the 1st respondent's previous engagement during the period from 30.1.1984 to 30.11.1984, he had put in a total service of 292 days, (231 days actual employment + 37 Sundays + 10 Second Saturdays + 14 national and telegraph holidays), that he was illegally retrenched during the period from 1.12.1984 to 30.6.1985, that this period was to be counted as service for all purposes, therefore the 1st respondent should be deemed to be in continuous service preceding his retrenchment on 1.4.1986 and that he must be deemed to be in continuous employment from 30.1.1984 to 31.3.1986.

The question which arises for consideration is as to whether this period of engagement of the 1st respondent from 30.1.1984 to 30.11.1984 should also be taken into consideration to determine as to whether he was entitled for protection under Section 25-F of the Industrial Disputes Act? The order of reference is as to whether the action of the petitioner herein in retrenching the 1st respondent, with effect from 1.4.1986, was justified or not.

As noted above Section 10(1)(d) enables the appropriate Government to refer the

dispute to an Industrial Tribunal for adjudication. Section 10 (4) provides that where in the order, referring an industrial dispute to the Industrial Tribunal, the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto.

As Labour Courts/Industrial Tribunals derive their jurisdiction from the reference made by the State/Central Governments, they are bound to act within the four corners thereof, and cannot enlarge the scope of the reference nor deviate therefrom. A demand which was not raised at the time of raising the dispute cannot be gone into by the Labour Court/Industrial Tribunal being not the subject-matter of the reference. (**Mahendra L. Jain Vs. Indore Development Authority**[17] and **Pottery Mazdoor Panchayat Vs. Perfect Pottery Co.**[18]). Since the jurisdiction of the Industrial Tribunal, in dealing with industrial disputes referred to it under Section 10(1)(d), is limited by Section 10(4) to the points specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the industrial tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. (**Express Newspapers Vs. Their Workers & Staff**[19]). In construing the terms of reference and in determining the scope and nature of the points referred to the industrial tribunal, Courts must look at the order of reference itself. (**The Calcutta Electric Supply Corporation Ltd., Vs. The Calcutta Electric Supply Workers' Union**[20]). While it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct. (**Delhi Cloth and General Mills Company Ltd. Vs. Their Workmen**[21].)

In **Senior Regional Manager, Hindustan Petroleum Corporation Limited**[2] the Division Bench of this Court held thus:-

"…….. **The functions of an Industrial Tribunal are quasi-judicial but it is not a civil Court. It has not the inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of reference. In other words, the Tribunal has to function within the limits imposed upon it by the Act and has to act according to its provisions.** In adjudicating upon a 'industrial dispute', the Tribunal cannot arrogate to itself powers which the Legislature alone can confer or do something which the Legislature has not permitted to be done. In R.S. Ramdayal Ghasiram Oil Mills Vs. Labour Appellate Tribunal, (1963) II LLJ 65 (SC) and West Bengal Press Workers and Employees Union Vs. Eighth Industrial Tribunal, (1974) II LLJ 404 (SC), the Supreme Court held that the Industrial Tribunal acquires jurisdiction to adjudicate upon an 'industrial dispute' only after it has been referred to it. In other words without such a

reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute. **Wherein an order referred an industrial dispute to a Tribunal under Section 10(1) of the Act, the 'appropriate Government' has specified the points of dispute for adjudication, the Tribunal shall confine the adjudication to those points and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its adjudication to the points specifically mentioned and anything which is incidental thereto. It is well settled that the order of reference by which an industrial dispute is referred to the Labour Court or Industrial Tribunal for adjudication gives jurisdiction to the Labour Court or the Tribunal, as the case may be, to deal with the merits of dispute.** This position is well settled by the judgment of the Supreme Court in Jhagbrakhand Collieries (P) Limited Vs. Central Government Industrial Tribunal: (1960) II LLJ (SC), and several other judgments to follow. **The jurisdiction of the Tribunal being limited to the matters referred to it by the Government, it would have no right to travel outside the reference, and proceed to adjudicate the matters not referred to it.** This position is also well settled by a catena of decisions of the Apex Court including Gouri Sankar Chatterjee Vs. Texmaco Limited and others, 2000(8) Supre e519, Workmen of British India Corporation Limited Vs. British India Corporation Limited, (1965) II LLJ 433 (SC), DelhiCloth and General Mills Company Limited Vs. Its Workmen, (1967) I LLJ 423, the Jaipur Udyog Limited Vs. The Cement Work Karmachari Sangh, Sahu Nagar, (1972) I LLJ 437, and Firestone Tyre and Rubber Company of India Private Limited Vs. Workman, (1981) II LLJ 218, to cite a few.

An Industrial Tribunal is the creature of the Industrial Disputes Act. Sub-section (4) of Section 10 delineates the perimeter of the jurisdiction of the adjudicatory authorities viz., the Labour Court, the Industrial Tribunal or the National Tribunal to adjudicate. The word "jurisdiction" means authority to decide or the legal authority of a Court or Tribunal to do certain things. An Industrial Tribunal being creature of the Act, its jurisdiction is confined by the Act, its jurisdiction is confined by the Act, thereby meaning that the Tribunal will have no jurisdiction, to adjudicate upon any dispute or lis to which the Act does not apply. **Further, the jurisdiction of the Tribunal has been limited by the provisions of Section 10(4) to confine its adjudication to "the points specified in the order of reference and matters incidental thereto." Whereby reason of any limitation imposed by statute, a Tribunal lacks jurisdiction to entertain any particular matter, neither acquiescence nor consent of the parties can confer jurisdiction on it.** In other words, a party cannot confer jurisdiction where it does not exist because no amount of consent, acquiescence or waiver can create it or confer it. Nor can a party take away the jurisdiction of the Tribunal by way of objection where it exists.

"……The jurisdiction of the Industrial Tribunal being by virtue of the Act and limited by the terms of reference under Section 10, it would not be open to the workers and the management to confer jurisdiction upon the Tribunal on a question not covered by the reference. The mere fact that an objection was not taken before the Tribunal, would not give its jurisdiction if it inherently had no jurisdiction. An Industrial Tribunal is not a Court of general or residuary jurisdiction but a Tribunal with specific jurisdiction enumerated by the terms of the orders of reference. In other words, it is an ad hoc Tribunal with ad hoc jurisdiction to determine specific industrial disputes. The Tribunal has to confine itself to the pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off at a tangent disregarding the pleadings and reach any conclusion that it thought as just and proper, as held by the Supreme Court in Parry and Company Limited Vs. P.C. Lal, (1970) II LLJ 429 (SC).

It is true that under the Act the Labour Court and the Tribunals have full powers to adjudicate upon all matters in dispute between the employers and workmen and give adequate relief. But, at the same time, it should be remembered that a Labour Court to a Tribunal cannot grant relief not claimed by workmen. **Likewise, it will have no jurisdiction to award relief in excess of the demand of workmen, nor can it grant relief with respect to disputes not referred to it. In Delhi Cloth and General Mills Company Limited Vs. Its Workmen (supra), the Supreme Court held that the Industrial Court cannot grant relief to workmen with respect to disputes not referred to it because it cannot proceed to adjudicate disputes not referred……(emphasis supplied)**

Since the dispute referred to the Industrial Tribunal, for adjudication in I.D.No. 68 of 1990, was as to whether retrenchment of the 1st respondent with effect from 1.4.1986 was justified or not, the Tribunal could not have gone beyond the scope of the reference and examined as to whether retrenchment of the 1st respondent, with effect from 30.11.1984, was justified or not. The Tribunal ought to have confined its adjudication to the dispute as to whether retrenchment of the services of the 1st respondent with effect from 1.4.1986 was justified or not and not his earlier retrenchment with effect from 30.11.1984. As noticed above,

the 1st respondent was earlier engaged for ten months from 30.1.1984 to 30.11.1984. Thereafter, after a break of seven months, he was again engaged from 1.7.1985 to 31.3.1986.

In **DGM Oil & Natural Gas Corpn. Ltd. v. Ilias Abdulrehman**[22], the Supreme Court held thus:-

".....In such circumstances we think that the Industrial Tribunal was justified in coming to the conclusion that the number of days of work put in by the respondent in broken periods, cannot be taken as a continuous employment for the purpose of Section 25-F of the Act, as has been held by this Court in the case of *Indian Cable Co. Ltd.*[1] We are aware that the judgment of this Court in *Indian Cable Co. Ltd.*[1] was rendered in the context of Section 25-G of the Act, still we are of the opinion that the law for the purpose of counting the days of work in different departments controlled by an apex corporation will be governed by the principles laid down in the judgment of *Indian Cable Co. Ltd.: (1962) 1 LLJ 409* and the Industrial Tribunal was justified in dismissing the reference...."

In view of the break in service of seven months, the earlier period of engagement from 30.1.1984 to 30.11.1984 could not have been clubbed with the subsequent engagement from 1.7.1985 to 31.3.1986, to decide whether the services of the 1st respondent was engaged for a period in excess of 240 days, and whether retrenchment of his services was in violation of Section 25-F of the Industrial Disputes Act. The Tribunal went beyond the scope of the reference and exceeded its jurisdiction in examining as to whether the 1st respondent had put in continuous service of 240 days during the period from 30.1.1984 to 30.11.1984 and in clubbing this period with the subsequent engagement from 1.7.1985 to 31.3.1986. Since the evidence on record clearly establishes that the 1st respondent had not put in the minimum required 240 days of service during the 12 months prior to his termination, i.e., from 1.4.1985 to 31.3.1986, he was not entitled for the protection of Section 25-F of the Industrial Disputes Act. Failure, of the petitioner herein, to comply with the conditions prescribed under Section 25-F of the Industrial Disputes Act would neither enure to the benefit of the 1st respondent nor would it entitle him to seek reinstatement on the plea that his termination, is in violation of Section 25-F and is *ab initio* void.

GIVING RETROSPECTIVE OPERATION TO THE AWARD: ARE MATTERS OF DISCRETION OF LABOUR COURTS/INDUSTRIAL TRIBUNALS:

Sri C. Suryanarayanan, learned Counsel for the 1st respondent, would however contend that the period from 30.01.1984 to 30.11.1984 was rightly included, in the period of service for computation of "continuous service" under Section 25-B of the Industrial Disputes Act, since the Tribunal had the power to pass an award with retrospective effect and to grant relief from a date anterior to the date of award or even the date of the reference. Learned Counsel would seek to buttress his submission with judgments of the Apex Court.

In **Inder Singh**[12], the Supreme Court held thus:-

> ".....While these cases do not lay down an absolute proposition as suggested on behalf of the respondent that relief can in no case be granted for a period prior to the demand they do strongly support the proposition that in deciding on the date from which the relief should be given the industrial tribunal ought to pay particular attention to the date when the demand was first made....."

In **Rajkamal Kalamandir (private), Ltd.**[10], the Supreme Court held thus:-

".....It is clear that in reversing the order of the tribunal, the High Court has in substance purported to exercise its appellate jurisdiction. **Whether or not the award should be retrospective in its effect is a**

question that is usually to be determined by the tribunal in its discretion. Undoubtedly, like all matters left to judicial discretion, the question about the retrospective operation of the award must also be considered on reasonable grounds, but that is not to say that the matter is not one of discretion. Therefore, in interfering with an order which was within the discretion of the tribunal, the High Court has really purported to substitute its discretion for that of the tribunal and that clearly is outside its jurisdiction under Art. 227……(emphasis supplied)

In **Hydro (Engineers) (P) Ltd.[11]**, the Supreme Court held thus:-

"……. The next objection to the award was that the Tribunal erred in giving effect to the award retrospectively as from July 1, 1966, that is, approximately from the date of the demand and that if at all it wanted to give such retrospective effect, the utmost that it could do was to enforce it from the date of the reference. In some cases retrospective effect, no doubt, has been given from the date of the reference. But it is a matter of discretion for the Tribunal to decide from the circumstances of each case from which date its award should come into operation. No general rule can be laid down as to the date from which a Tribunal should bring its award in force: (see *Hindustan Times* v. *Their Workmen: AIR 1963 SC 1332*. *Pre*sumably, the Tribunal gave effect to its award from July 1966 as by that time the cost of living index had already gone up considerably and not to have done so would have been to deprive the workmen of the minimum wages commensurate with that rise. In *Jhagrakhand Collieries (Private) Ltd.* v. *C.G.I.T. Dhanbad: 1960-2 Lab LJ 71 (SC)* and *United Collieries* v. *Workmen: 1961-2 Lab 75 (SC)* the awards were made operative from the respective dates of demands and this Court did not interfere with those awards on the ground that there was thereby any breach of any recognised principle. If **the Tribunal has exercised its discretion and no substantial ground is made out to show that it was unreasonably exercised, the mere fact that it was retrospectively enforced its award from the date of the demand is hardly a ground for interference with the award……..." (emphasis supplied)**

In **Inder Singh[12]**, the Supreme Court held that while deciding on the date from which the relief should be given, the Industrial Tribunal ought to pay particular attention to the date when the demand was first made. In **Rajkamal Kalamandir (private) Ltd[10]**, the Supreme Court held that the question, whether the award should be retrospective in its effect, was to be determined by the Tribunal in its discretion and as long as the discretion was exercised on reasonable grounds it did not call for interference and it was not open for the High Court to substitute its discretion for that of the Tribunal. In **Hydro (Engineers) (P) Ltd[11]**, this principle was reiterated.

While the Tribunal is empowered to pass an award or to grant relief with retrospective effect, even anterior to the date of reference, it cannot however adjudicate a dispute which is not within the scope of the reference made to it by the appropriate government. In the present case the dispute referred to the Tribunal was as to whether the action of the petitioner herein in retrenching the 1st respondent with effect from 01.04.1986 was justified or not. If the Tribunal had held that the retrenchment of the 1st respondent with effect from 01.04.1986 was not justified, and if the conclusion was in accordance with law, it was in the discretion of the Tribunal to grant relief to the 1st respondent from a date anterior to the date of award. The Tribunal was, however, not entitled to take into consideration extraneous factors, and matters which fell outside the scope of the reference, in adjudicating the dispute referred to it.

In **Ganganath K.S.Vidyalaya[13]**, the workman was engaged continuously during the period between 1st February 1970 and 4th July 1979 and termination of his services on 7th July 1979 was without notice or pay in lieu thereof nor was retrenchment compensation paid to him. It is in such circumstances that the labour Court held his termination to be illegal. Before the Allahabad High Court it was contended on behalf of the employer that, while

passing the impugned order of termination the workman was simultaneously offered employment on daily wages and since there was no cessation of relationship of master and servant between the employer and the workman, refusal by the workman to accept such daily wage employment would not amount to retrenchment. The learned single Judge, of the Allahabad High Court, held that the order of termination dated 04.07.1979 instantaneously snapped the relationship of employer and employee and amounted to retrenchment and the alleged offer of alternative employment would not have the effect of diluting the fatal infirmity in the retrenchment caused by the order of termination and that the offer of an alternative employment would not exclude the termination from the ambit of the expression "retrenchment". The aforesaid judgment of the Allahabad High Court has no application to the case on hand, wherein the question which arises for consideration is as to whether the Tribunal could go beyond the scope of reference and adjudicate on matters extraneous to the dispute referred to it. Termination of the services of the 1st respondent dated 30.11.1984 was not the subject matter of reference before the Tribunal and, as such, could neither have been examined nor could the said period of service, between 30.01.1984 to 30.11.1984, be included for reckoning continuous service of a workman, consequent upon his engagement during the period 01.07.1985 to 31.03.1986.

The judgments relied upon by Sri C. Suryanarayana learned Counsel for the 1st respondent, have no application to the facts of the present case.

VIOLATION OF SECTION 25-F DOES NOT CONFER ANY RIGHT TO SEEK REGULARISATION OF SERVICES

The Tribunal, while holding that the retrenchment of the 1st respondent was in violation of Section 25-F of the Industrial Disputes Act and in directing his reinstatement, also directed that he be reinstated as a Group-D employee and with protection of his seniority among the employees of Mahaboobnagar District. As noted above, the petitioner was engaged only as a casual majdoor and not in a Group-D post. From the order of appointment dated 07.07.2000, placed before this Court, it is clear that a casual majdoor, on his services being regularized, is appointed as a temporary status majdoor and it is only upon rendering three years of continuous service after attainment of temporary status is the said employee treated on par with temporary Group-D employees.

In **Digambara Rao**[5], the Supreme Court held thus:-

".....**It may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularisation. It is also not the case of the respondents that they were appointed in accordance with the extant rules. No direction for regularisation of their services, therefore, could be issued.** (See *A. Umarani* v. *Registrar, Coop. Societies: (2004) 7 SCC 112* and *Pankaj Gupta* v. *State of J&K(2004)8 SCC 353*.) Submission of Mr Maruthi Rao to the effect that keeping in view the fact that the respondents are diploma-holders and they have crossed the age of 40 by now, this Court should not interfere with the impugned judgment is stated to be rejected....." (emphasis supplied)

In **Dhampur Sugar Mills Ltd. v. Bhola Singh**[23], the Supreme Court held thus:-

".....When a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularised in his service. **It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation particularly in**

a case when the workman had not been appointed in accordance with the extant rules……..” (emphasis supplied)

In **Manager, Reserve Bank of India v. S. Mani**[24], the Supreme Court held thus:-

“……..**In law, 240 days of continuous service by itself does not give rise to claim of permanence.** Section 25-F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein. (See *Maharashtra State Coop. Cotton Growers' Marketing Federa-tion Ltd.* : 1994 Supp (3) SCC 385 See also *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra : AIR 1994 SC 1638.*)…….”

Furthermore, a direction for reinstatement for non-compliance with the provisions of Section 25-F of the Industrial Disputes Act would restore to the workman the same status which he held when terminated…….” (emphasis supplied)

In **Tarun Kundu**[6], the Division bench of the Calcutta High Court held thus:-

“…….**Law nowhere states that if a person has worked for more than 240 days in a year he is entitled to be regularized in service.** Provision contained in Chapter V of the Industrial Disputes Act had been enacted merely to protect the right of workman from being illegally dismissed from service. Section 25-F of the said Act merely contemplates payment of compensation at the rate of 15 days wages per each year of completion of service, and only in that context, it has been provided that such year of completion of service shall be deemed to have been completed if a person has worked for more than 240 days in a year. **Section 25 of the said Act, therefore, does not contemplate creation of any right of absorption in favour of any person.** It appears that the petitioners have proceeded on a wrong premise…….” (emphasis supplied)

Thus mere completion of 240 days of continuous service in a year cannot, by itself, form the basis for directing regularization of services of a workman when his appointment is not in accordance with the extant rules. Section 25-F does not create any right of absorption in favour of such an employee. The Award of the Tribunal, directing reinstatement of the 1st respondent as a Group-D employee, is liable to be set aside.

The Award of the Tribunal is beyond the scope of the reference and, inasmuch as the 1st respondent did not complete 240 days of service within the 12 months period prior to his termination from service on 01.04.1986, he is not entitled to the protection of Section 25-F of the Industrial Disputes Act. The impugned award of the Tribunal, in directing his reinstatement as Group-D employee with full back wages and protection of his seniority among the employees of Mahaboobnagar District, is quashed. It is however made clear that, in terms of the order of the petitioner dated 07.07.2000, the 1st respondent shall be entitled to continue in service as a temporary status majdoor.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

_____

Date: .07.2006 RAMESH RANGANATHAN, J

Note:
L.R. copy be marked
B/o
MRKR/ASP

[1] 1985 (2) LLJ 539

[2] 2002(2) ALD 462

[3] 2002(5) ALD 14(SC)

[4] 2003(2)LLJ 359

[5] (2004)8 SCC 262

[6] (2002(1) LLJ 258

[7] (1994(1) LLN 606

[8] 2006(1) Decisions Today SC 493

[9] 1958 (1) LLJ 533

[10] 1963(1) LLJ 318

[11] AIR 1969 SC 182

[12] 1961(2) LLJ 89

[13] 1993 LLR 112

[14] (2006)3 SCC 81

[15] 2005(8) SCC 750

[16] (2005) 3 SCC 409

[17] AIR 2005 SC 1252

[18] 1979 LAB.I.C. 827 (SC)

[19] 1962(2) LLJ 227 (SC)

[20] AIR 1959 SC 1191

[21] 1967(1) LLJ 423 (SC)

[22] AIR 2005 SC 660 =(2005) 2 SCC 183

[23] (2005) 2 SCC 470

[24] (2005) 5 SCC 100